ATTORNEY FOR APPELLANT:

MELINDA K. JACKMAN
Greencastle, Indiana

ATTORNEY FOR APPELLEE:

SCOTT CLEVELAND
Department of Child Services
Greencastle, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF: The Termination of Parent-Child Relationship of M.H., a minor, and	)	
APRIL HILL, Mother,	)	
Appellant-Respondent,	)	
vs.	)	No. 67A05-0612-JV-691
PUTNAM COUNTY DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE PUTNAM CIRCUIT COURT
The Honorable Matthew L. Headley, Judge
Cause No. 67C01-0608-JT-23

April 30, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent April Hill appeals from the involuntary termination of her parental rights with respect to her minor child, M.H. The sole issue is whether the termination order should be set aside because the appellee-petitioner, Putnam County Department of Child Services (DCS), allegedly failed to provide Hill with adequate notice of the termination hearing. Finding no error, we affirm the judgment of the trial court.

FACTS

The undisputed facts are that Hill is the seventeen-year-old mother of M.H., who was born on July 27, 2005. On the date of M.H.'s birth, Hill was a probation ward of St. Clair County, Michigan and had been placed at the Ladoga Academy in Ladoga, Indiana. Following her birth, M.H. was immediately placed in foster care because she had no legal guardian. On August 2, 2005, the DCS filed a petition alleging that M.H. was a Child in Need Of Services (CHINS). Thereafter, on January 31, 2006, the trial court determined that M.H. was a CHINS.

On August 23, 2006, the DCS filed a petition for the involuntary termination of the parent-child relationship between Hill and M.H. The DCS alleged in its petition that there was a reasonable probability that the continuation of the parent-child relationship posed a threat to the well-being of M.H., that a termination of the parent-child relationship was in the best interest of M.H., and that the DCS had developed a satisfactory plan of care and treatment for M.H. On September 28, 2006, an initial hearing was held on the petition, at which time Hill did not appear.

At the initial hearing, a discussion commenced as to whether Hill had been served with notice of the hearing. Carmen Sims, the DCS caseworker, testified that Hill's mother

called Sims on September 25, 2006, and provided a contact address and telephone number for her daughter. The trial court then determined that Hill was provided with notice of the initial hearing through service by publication. Thereafter, the trial court appointed public defender James Recker to represent Hill during the termination proceedings. The trial court also directed the DCS to serve Hill with notice of the final hearing date at the address provided by her mother.

On November 6, 2006, the final hearing was conducted, and Hill again failed to appear. Prior to the presentation of evidence, Recker represented to the trial court that he had received a fax on October 31, 2006, from Port Huron Hospital in Michigan, indicating that Hill was "a patient there or at least was and was to return for labor and delivery" on November 1, 2006. Tr. p. 6. Thus, Recker stated that Hill was unable to attend the final hearing.

In response, the DCS counsel acknowledged that although she had received the same fax, she also had requested a more current statement than the one that was dated October 31, 2006. The DCS counsel also stated that Hill had telephoned the office just prior to the hearing, stating that she could not attend. The DCS also alerted the trial court that it had published a notice of the final hearing in the Banner-Graphic, a Putnam County newspaper. Counsel for the DCS also asserted that the initial hearing order was sent by certified mail to Hill at her last-known address, which contained the scheduled date of the final hearing. Although that letter was returned as "unclaimed," the DCS also sent a copy of the order to Hill at the same address by regular mail, which had not been returned. Id. at 7-8. Finally, the DCS had been sending the signed court orders to Hill at her mother's address because her

mother "seems to know where [Hill] is at all times." Id. at 7. Following this discussion, the trial court determined that the notice to Hill of the final hearing was sufficient. Following the presentation of evidence, the trial court terminated Hill's parental rights as to M.H. Hill now appeals.

DISCUSSION AND DECISION

I. Standard of Review

In addressing Hill's claim, we first note that we will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). We neither reweigh the evidence nor judge the credibility of witnesses. Id. We consider only the evidence that supports the trial court's decision and the reasonable inferences that may be drawn therefrom. Id. If the evidence and the inferences support the trial court's decision, we must affirm. In re L.S., D.S., and A.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999).

We acknowledge that the involuntary termination of parental rights is the most extreme sanction that a court can impose on a parent because termination severs all rights of the parent to his or her children. Id. Therefore, termination is intended as a last resort, available only when all other reasonable efforts have failed. Id. The purpose of terminating parental rights is not to punish the parents but, instead, to protect their children. Id. Thus, although parental rights are of a constitutional dimension, the law provides for the termination of these rights when the parents are unable or unwilling to meet their parental responsibilities. Id.

To effect the involuntary termination of a parent-child relationship, the State must present clear and convincing evidence establishing that

> (A) one (1) of the following exists:
>
> > (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
> >
> > (ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
> >
> > (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;
>
> (B) there is a reasonable probability that:
>
> > (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
> >
> > (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
>
> (C) termination is in the best interests of the child; and
>
> (D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 35-2-4(b)(2).

II. Notice

Hill's sole argument on appeal is that we should remand this case to the trial court for a new termination hearing because the DCS failed to give her proper notice of the termination hearing date. Thus, Hill maintains that the failure to provide her with sufficient notice amounted to a denial of due process.

We initially observe that the State must satisfy the requirements of the Due Process Clause of the Fourteenth Amendment to the United States Constitution when it seeks to terminate the parent-child relationship. In re S.P.H., 806 N.E.2d 874, 878 (Ind. Ct. App. 2004). "Due process requires notice, an opportunity to be heard, and an opportunity to confront witnesses." In re M.L.K., 751 N.E.2d 293, 295-96 (Ind. Ct. App. 2001). Before an action affecting a party's interest proceeds, "the State, at a minimum, must provide notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Id. at 296.

Presumably because of the great interests at stake in termination proceedings, our legislature has enacted an additional notice requirement. Indiana Code section 31-35-2-6.5(b) requires, in relevant part, that the person or entity that filed the petition to terminate the parent-child relationship send notice of the termination hearing to the parent at least ten days prior to the hearing date. This notice provision is a statutory procedural requirement that does not rise to a constitutional dimension. In re A.C., 770 N.E.2d 947, 950 (Ind. Ct. App. 2002). As this court observed in In re A.C.,

> [n]o constitutional, statutory, or procedural provision requires service of the notice of the hearing to rise to the same level as service of process. To impose such a requirement would permit a parent or other party entitled to notice to frustrate the process by failing to provide a correct address and would add unnecessarily to the expense and delay in termination proceedings when existing provisions adequately safeguard a parent's due process rights.

Id.

In this case, Hill's counsel did not object to the trial court's determination regarding

the adequacy of notice. Therefore, the issue is waived. See In re E.E., 853 N.E.2d 1037, 1043 (Ind. Ct. App. 2006), trans. denied (finding that the respondent-father waived any issue regarding the form of the notice of the termination hearing when he failed to object at trial).

Waiver notwithstanding, the gravamen of Hill's argument is that there is no evidence that she had actual notice of the November 6, 2006, termination hearing, and that she was unaware that her parental rights could be terminated on that date. However, Hill's counsel was present at the November 6, 2006, termination hearing and was questioned with regard to Hill's whereabouts. Tr. p. 6. After the trial court determined that Hill had received sufficient notice of the hearing in light of Sims's testimony regarding the mailing of notices, the DCS counsel's representations about her conversation with Hill just prior to the hearing, and the notice that was published in the newspaper, the hearing proceeded without objection. Id. at 7-10, 21.

In our view, sending notice of the hearing to Hill at her last known address satisfied due process considerations as well as the requirements of Indiana Code section 31-35-2-6.5. See In re A.C., 770 NE.2d at 947 (holding that the father received adequate notice of the termination proceeding where the Office of Family and Children published service to the father three times in a county newspaper and sent notice of the termination hearing to the father at the address he had provided). Moreover, it was reasonable for the trial court to infer that Hill had actual notice of the termination hearing in light of her conversation with DCS personnel just prior to the hearing. As a result, Hill's due process argument fails.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and CRONE, J., concur.